Filed 5/7/19 Clinton v. Cody CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

DIANA CLINTON et al., Plaintiffs and Appellants, v. SARA CODY, as Director, etc., Defendant and Respondent.	H044030 (Santa Clara County Super. Ct. No. 115CV284367)

I. INTRODUCTION

Plaintiffs, who were homeless residents of Santa Clara County, filed a petition for a writ of mandate commanding defendant Sara Cody, in her capacity as the director of the Santa Clara County Public Health Department, "to provide adequate and appropriate places in [the county] for homeless individuals to sleep safely each night between the hours of 8 p.m. to 7 a.m." In support of the petition, plaintiffs primarily relied on Welfare and Institutions Code section 17000,[1] which requires every county to "relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, . . . when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

institutions." The trial court denied the petition, after determining that plaintiffs were seeking to compel defendant to exercise her discretion in a particular manner by directing her to provide a specific type of aid, and that the court did not have the authority to grant such relief.

On appeal, plaintiffs contend that the trial court erred because counties have a mandatory duty to provide sleeping sites for the homeless.

For reasons that we will explain, we will affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Petition*

In a verified petition for a writ of mandate, plaintiffs Diana Clinton, Zinnia Garcia, Raul Silva, and Kelly Tasker sought to "command[] [defendant] to provide adequate and appropriate places in Santa [Clara] County for homeless individuals to sleep safely each night between the hours of 8 p.m. to 7 a.m." Plaintiffs stated that they and other homeless individuals in the county had "no place in the county where they [could] sleep without being subjected to harassment, sleep-deprivation, and criminal prosecution." According to plaintiffs, there were "only a small number of shelter beds available at any given time in the County of Santa Clara." In San Jose in particular, the total number of shelter spaces in the city was only 24 percent of the total number of homeless individuals residing in the city. Plaintiffs stated that they were "forced to sleep outdoors because they cannot afford to pay for any right to a sleeping site." Plaintiffs alleged that defendant had a duty "to protect the health of poor people," including by providing a place to sleep, "because the deprivation of sleep and other forms of harassment by police, sheriffs, and other public authorities cause physical and psychological illness, and frustrate the ability of homeless people to attend to their personal needs."

In a memorandum supporting the petition, plaintiffs contended that defendant had a "statutory duty to provide a safe, legal place to sleep." Plaintiffs contended that there was no public or private property in the state where a person could rest without being

subjected to criminal liability. Plaintiffs cited Penal Code section 647, subdivision (e), which defines misdemeanor disorderly conduct as including a person "[w]ho lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it." Plaintiffs clarified that they were not challenging the constitutionality of this Penal Code provision, nor otherwise raising a constitutional claim.

Instead, plaintiffs contended that the county had a statutory duty under section 17000 to provide a safe, legal sleeping site for those who do not have a property right to such a site. Section 17000 generally requires every county to "relieve and support" all "indigent persons" and "those incapacitated by age, disease, or accident." According to plaintiffs, in *Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069 (*Tobe*), the California Supreme Court "implied" that section 17000 creates an obligation for counties to provide "safe, legal sleeping sites" for the indigent. Plaintiffs also observed that sleeping is a need, not an option, and that the loss of sleep causes physical and mental problems. Plaintiffs further contended that the county's obligation to protect the health of the poor under section 17000 encompassed "other remedial care," not just medical care (§ 14059), and included the obligation to provide a sleeping site.

B. *Opposition*

In written opposition, defendant contended that section 17000 did not impose a duty on the county to provide sleeping sites to homeless individuals each night between 8:00 p.m. and 7:00 a.m. She argued that section 17000 gives counties broad discretion to create local assistance programs and to determine the type of aid available to indigent residents. In this regard, Santa Clara County had exercised its discretion to provide housing assistance through a general assistance program. The county had also implemented other programs and invested millions of dollars to create housing solutions and address homelessness. Defendant contended that section 17000 did not require the county to offer a different type of housing assistance and did not require the particular

form of assistance sought by petitioners. Defendant further contended that the county's obligation to provide medical care under section 17000 did not include a duty to provide sleeping sites to homeless individuals. In the absence of a mandatory duty on the county to provide sleeping sites to homeless residents as requested by plaintiffs, defendant contended that the petition should be denied.

In opposition to plaintiffs' petition, defendant provided two declarations from county employees. In one declaration, a manager in the Department of Employment and Benefit Services, a department within Santa Clara County's Social Services Agency, described the county's general assistance program and the health care services available to homeless county residents. According to the manager, the monthly benefit under the county's general assistance program was calculated based on the formula set forth in section 17000.5. The general assistance program provided "cash and in-kind assistance" to indigent adult county residents who were not eligible for cash assistance through state or federal benefit programs. In particular, "[h]omeless individuals receive[d] various kinds of in-kind housing assistance, including assistance with paying for motel stays through a motel reimbursement program, direct payment to a landlord or other person who provides housing or a place to sleep for the homeless individual, and payment of homeless/emergency shelter fees. . . . In addition to assistance provided under the [general assistance] program, the County administer[ed] numerous other programs to assist homeless individuals in obtaining permanent housing and to provide them with financial, health, mental health, education, and employment assistance."

In another declaration, Santa Clara County's chief operating officer described the county's programs to provide housing to the homeless. These programs included housing, housing subsidies, rent assistance, shelter beds, and funding the development of affordable housing. The county board of supervisors also approved expenditures for the fiscal years 2016 through 2018 for additional programs and activities recommended by a county housing task force, including programs and activities that would: expand

emergency shelter and transitional housing programs; acquire hotels and motels to be used as shelter, transitional housing, or interim housing connected to permanent housing programs; expand "rapid rehousing programs," which provide temporary housing assistance and services to help individuals transition out of homelessness and remain housed on a stable basis; establish locally-funded housing programs for homeless veterans; establish a county team to engage and connect homeless individuals to permanent housing programs; and support the establishment of a program where people living in their cars can secure a safe place to sleep and access basic services.

C. *Reply*

In reply, plaintiffs acknowledged the county's statements that it had engaged in various efforts to obtain housing for homeless individuals and had spent millions of dollars on these efforts. Plaintiffs stated that they did "not deny the truth of these statements." Plaintiffs contended, however, that "[d]espite these efforts, . . . the plight of the vast majority of homeless people continues on unabated."

Plaintiffs contended that section 17000 was part of a "broad and comprehensive scheme designed to ameliorate the suffering of indigent people," and that counties were required to provide "a legal place to sleep." Plaintiffs argued that, although section 17000 did not contain "word-for-word directions," it was an "abuse of discretion under [s]ection 17000 for the county to fail to provide, at the very minimum, a sleeping site beyond the reach of [law enforcement] armed with a prohibition such as that found in [Penal Code section 647, subdivision (e)]."

D. *The Trial Court's Denial of the Petition*

The trial court held a hearing on the petition and then took the matter under submission.[2] In a written order, the trial court denied the petition and denied the parties' requests for judicial notice of various documents.

[2] A reporter's transcript of the hearing is not included in the record on appeal.

In denying the petition, the trial court explained that section 17000 establishes only a "general duty to relieve and support indigent persons who are not otherwise supported" and gives counties broad discretion in performing their obligations under the statute. The court observed that the statute does not specifically require counties to provide homeless people with places to sleep. The court explained that although a court may order a public body to exercise its discretion in the first instance when the public body has refused to act, a writ of mandate may not be used to compel the exercise of discretion in a particular manner or to reach a particular result. The court concluded that it could not grant the relief requested by plaintiffs. Judgment was subsequently entered in favor of defendant.

III. DISCUSSION

Plaintiffs contend that the trial court erred in denying the petition for a writ of mandate. Relying primarily on section 17000, plaintiffs contend that Santa Clara County has a mandatory duty to provide sleeping sites for the homeless, and that this duty arises from a county's statutory obligation to provide medical care.

We first set forth general legal principles concerning a writ of mandate, before considering the scope of a county's obligation under section 17000.

A. *Writ of Mandate*

A traditional writ of mandate lies "to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station . . . ." (Code Civ. Proc., § 1085, subd. (a).) Thus, "[m]andamus will lie to compel a public official to perform an official act required by law. [Citation.]" (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.) To obtain relief, the plaintiff must establish the existence of a public officer's or a public entity's "clear, present, and ministerial duty where the [plaintiff] has a beneficial right to performance of that duty. [Citations.]" (*California Assn. of Professional Scientists v. Department of Finance* (2011) 195

Cal.App.4th 1228, 1236; see *County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 653.)

" 'A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his [or her] own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists. Discretion, on the other hand, is the power conferred on public functionaries to act officially according to the dictates of their own judgment.' [Citations.] Thus, '[w]here a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion.' [Citation.]" (*Carrancho v. California Air Resources Board* (2003) 111 Cal.App.4th 1255, 1267, italics omitted.)

"[A] writ of mandate is not available to control the discretion of that public body or official. Although a court may order a public body to exercise its discretion in the first instance when it has refused to act at all, the court will not compel the exercise of that discretion in a particular manner or to reach a particular result. [Citation.] When the duty of a public body is broadly defined, the manner in which it carries out that responsibility ordinarily requires the exercise of discretion; under such circumstances, mandate is not available to order that public body to proceed in a particular manner. [Citation.]" (*Building Industry Assn. v. Marin Mun. Water Dist.* (1991) 235 Cal.App.3d 1641, 1645-1646 (*Building Industry Assn.*).)

In sum, "[t]o be enforceable by writ of mandate, a statutory duty must ' "be *obligatory*, rather than merely discretionary or permissive, in its directions to the public entity; it must *require*, rather than merely authorize or permit, that a particular action be taken or not taken. [Citation.] It is not enough, moreover, that the public entity or officer have been under an obligation to perform a function if the function itself involves the exercise of discretion. [Citation.]" [Citations.]' [Citation.]" (*Pich v. Lightbourne* (2013) 221 Cal.App.4th 480, 493 (*Pich*).)

B. *Section 17000*

Plaintiffs primarily rely on section 17000 for the proposition that defendant has a duty to provide nighttime sleeping sites for homeless individuals. Section 17000 states: "Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions."

As explained by the California Supreme Court, section 17000 imposes a "mandatory duty" on counties to relieve and support an indigent or incapacitated person when that person is not relieved and supported by some other means. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 991 (*Hunt*).) This section "creates 'the residual fund' to sustain indigents 'who cannot qualify . . . under any specialized aid programs.' [Citations.]" (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 92, italics omitted (*County of San Diego*).)

"Two distinct obligations arise out of section 17000—the obligation to financially support the indigent through [general assistance] and the obligation to provide health care." (*Watkins v. County of Alameda* (2009) 177 Cal.App.4th 320, 330 (*Watkins*); accord *Hunt*, *supra*, 21 Cal.4th at p. 1002 ["a county's duty to provide medical care pursuant to section 17000 is independent of other obligations imposed by that section, including the obligation to pay general assistance"]; *Tailfeather v. Board of Supervisors* (1996) 48 Cal.App.4th 1223, 1234 (*Tailfeather*) ["section 17000's reference to the counties' duty to 'relieve and support' indigents includes a requirement for provision of medical care"].) We consider each of these obligations below.

1. General assistance

Regarding general assistance, in section 17000.5 the Legislature has "specified a minimum general assistance grant that it deems to be 'a sufficient standard of aid.'

[Citation.].)"[3] (*Hunt, supra*, 21 Cal.4th at p. 992.) This "statute provide[s] a safe harbor for counties choosing to adopt this standard of aid. [Citation.]" (*Ibid.*; accord, *Cleary v. County of Alameda* (2011) 196 Cal.App.4th 826, 840 (*Cleary*).) "Compliance with section 17000.5 fulfills [the duty to provide general assistance] even if the amount paid does not meet basic needs. [Citation.]" (*Taylor v. Contra Costa County* (1996) 48 Cal.App.4th 1709, 1711.)

Under section 17000.5, "the [general assistance] standard of care can be satisfied with in-kind aid as well as with cash grants. [Citation.]" (*Cleary, supra,* 196 Cal.App.4th at p. 841; see § 17001.5, subd. (c).) "Thus, a county may satisfy its statutory obligation to support and relieve the indigent by providing in-kind aid such as food and shelter, and may reduce general assistance grant levels by the value of in-kind aid that is actually made available. [Citations.]" (*Hunt, supra,* 21 Cal.4th at p. 992.) However, "section 17000.5 concerns only the calculation of general assistance grants, not the scope of the obligation to provide health care." (*Hunt, supra*, at p. 1005; see *id.* at p. 1003, fn. omitted [§ 17000.5 "has no bearing upon a county's duty to provide health care to its residents"].)

2. Medical/health care

Regarding medical care, counties have a "responsibility to provide medical care as providers of last resort under section 17000" (*County of San Diego, supra*, 15 Cal.4th at p. 98), meaning counties have "a duty to provide medical care to indigent persons not

[3] Section 17000.5 states in part: "(a) The board of supervisors in any county may adopt a general assistance standard of aid, including the value of in-kind aid which includes, but is not limited to, the monthly actuarial value of up to forty dollars ($40) per month of medical care, that is 62 percent of a guideline that is equal to the 1991 federal official poverty line and may annually adjust that guideline in an amount equal to any adjustment provided under Chapter 2 (commencing with Section 11200) of Part 3 for establishing a maximum aid level in the county. This subdivision is not intended to either limit or expand the extent of the duty of counties to provide health care. [¶] (b) The adoption of a standard of aid pursuant to this section shall constitute a sufficient standard of aid."

eligible for such care under other programs" (*Hunt, supra*, 21 Cal.4th at p. 991; see *County of San Diego, supra,* at pp. 100-101). " ' "Section 17000 . . . mandates that medical care be provided promptly and humanely. The duty is mandated by statute. There is no discretion concerning whether to provide such care . . . ." [Citation.]' [Citation.]" (*Hunt, supra,* at p. 1005; see also *id.* at p. 991.)

The California Supreme Court has characterized the required medical care under section 17000 as "subsistence medical care," but the court has not had occasion to determine the specific medical services that a county must provide under this section. (*Hunt, supra,* 21 Cal.4th at p. 1014.) The California Supreme Court has observed that the Courts of Appeal "construing section 17000 have held that it 'imposes a mandatory duty upon all counties to provide "medically necessary care," not just emergency care. [Citation.]' [Citations.] [Section 17000] further 'ha[s] been interpreted . . . to impose a minimum standard of care below which the provision of medical services may not fall.' [Citation.] In *Tailfeather,* [*supra,* 48 Cal.App.4th 1223,] the court stated that 'section 17000 requires provision of medical services to the poor at a level which does not lead to unnecessary suffering or endanger life and health . . . .' [Citation.] In reaching this conclusion, it cited *Cooke* [*v. Superior Court* (1989) 213 Cal.App.3d 401], which held that section 17000 requires counties to provide 'dental care sufficient to remedy substantial pain and infection.' (See also § 14059.5 [defining '[a] service [as] "medically necessary" . . . when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain'].)" (*County of San Diego, supra,* 15 Cal.4th at pp. 104-105.) Moreover, "[a] county's section 17000 duty to provide emergency and medically necessary care 'must [be] fulfill[ed] . . . without regard to its fiscal plight.' [Citation.]" (*Fuchino v. Edwards-Buckley* (2011) 196 Cal.App.4th 1128, 1134.)

Although a county has an obligation to provide medical care under section 17000, "such an obligation neither requires the [c]ounty to satisfy all unmet needs, nor mandates

universal health care." (*Hunt*, *supra*, 21 Cal.4th at p. 1014.) "The Legislature has eliminated any requirement that counties provide the same quality of health care to residents who cannot afford to pay as that available to nonindigent individuals receiving health care services in private facilities. [Citation.] Section 10000[4] imposes a minimum standard of care—one requiring that subsistence medical services be provided promptly and humanely. [Citation.] Counties retain discretion to determine how to meet this standard . . . ." (*Hunt*, *supra*, 21 Cal.4th at pp. 1014-1015.)

3. Discretion under the statutory scheme

"Section 17000 establishes the 'overarching "macro" policy' of the state mandating that each county provide aid and relief to its indigent population. [Citation.]" (*Watkins*, *supra*, 177 Cal.App.4th at p. 330.) In furtherance of that policy, section 17001 requires each county to "adopt standards of aid and care for the indigent and dependent poor." Under this latter section, "the Legislature has 'conferred *broad discretion* upon local governments to promulgate local, "micro" policies.' " (*Watkins*, *supra*, at p. 330, italics added.) For example, regarding general assistance, " '[w]ithin the overall state guidelines, counties retain extensive authority to set [general assistance] standards on matters ranging from eligibility to type and amount of relief and conditions attached thereto. [Citations.]' [Citations.]" (*Ibid.*) Likewise, regarding medical care, "[a]chieving the mandated level of care requires the exercise of considerable discretion as the [c]ounty chooses between a multitude of potential courses of action." (*Tailfeather*,

---

[4] Section 10000 states: "The purpose of this division is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life, and without discrimination on account of ancestry, marital status, political affiliation, or any characteristic listed or defined in Section 11135 of the Government Code. That aid shall be so administered and services so provided, to the extent not in conflict with federal law, as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society."

supra, 48 Cal.App.4th at p. 1246.) It is not the role of the courts to "to dictate how that discretion must be exercised." (*Ibid*.)

"Although [section 17001] confers upon a county broad discretion to determine eligibility for—and the types of—indigent relief, this discretion must be exercised in a manner that is consistent with—and that furthers the objectives of—state statutes. [Citations.] These objectives are 'to provide for protection, care, and assistance to the people of the state in need thereof, . . . to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to all of its needy and distressed,' and to administer such aid and services 'promptly and humanely.' (§ 10000.) Furthermore, '[t]he provisions of law relating to a public assistance program shall be fairly and equitably construed to effect the stated objects and purposes of the program.' (§ 11000.) 'County standards that fail to carry out section 17000's objectives "are void and no protestations that they are merely an exercise of administrative discretion can sanctify them." [Citation.] Courts, which have " 'final responsibility for the interpretation of the law,' " must strike them down. [Citation.] Indeed, despite the counties' statutory discretion, "courts have consistently invalidated . . . county welfare regulations that fail to meet statutory requirements. [Citations.]" [Citation.]' [Citation.]" (*Hunt*, *supra*, 21 Cal.4th at pp. 991-992.)

C. *Standard of Review*

In general, "[w]hen reviewing a trial court's judgment on a petition for ordinary mandate, we apply the substantial evidence test to the trial court's findings of fact and exercise our independent judgment on legal issues, such as the interpretation of statutory or regulatory requirements. [Citation.]" (*Menefield v. Foreman* (2014) 231 Cal.App.4th 211, 217.)

D. *Analysis*

Plaintiffs sought a writ of mandate "commanding [defendant] to provide adequate and appropriate places in [Santa Clara] County for homeless individuals to sleep safely

each night between the hours of 8 p.m. to 7 a.m." Below and on appeal, plaintiffs have contended that section 17000 imposes this obligation.

However, as the trial court observed, and as plaintiffs apparently acknowledged in the trial court, section 17000 does not expressly require counties to provide homeless individuals with places to sleep. Rather, under the statutory scheme, counties have "broad discretion" to determine the types of relief that they will make available to fulfill their obligation to provide aid and care to indigent residents. (*Hunt*, *supra*, 21 Cal.4th at p. 991; see *id.* at pp. 1014-1015; *Watkins*, *supra*, 177 Cal.App.4th at p. 330; *Tailfeather*, *supra*, 48 Cal.App.4th at p. 1246.) Plaintiffs fail to provide legal authority to support their contention that a writ of mandate may be used to compel defendant (or the county) to provide the particular type of aid or care that plaintiffs seek in this case, that is, places to sleep nightly between 8:00 p.m. and 7:00 a.m. A writ of mandate may not be used to compel a public body or official to exercise discretion "in a particular manner or to reach a particular result." (*Building Industry Assn.*, *supra*, 235 Cal.App.3d at p. 1646; accord, *Pich*, *supra*, 221 Cal.App.4th at p. 493.)

Likewise, plaintiffs' reliance on section 10000 does not advance their position that defendant has a mandatory duty to provide the relief requested in this case, that is, sleeping sites. Section 10000 states that "[t]he purpose of this division," which includes section 17000, "is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life, and without discrimination on account of ancestry, marital status, political affiliation, or any characteristic listed or defined in Section 11135 of the Government Code. That aid shall be so administered and services so provided, to the extent not in conflict with federal law, as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society."

Section 10000 "contain[s] general statements of policy applicable to all welfare statutes contained in division 9 of the Welfare and Institutions Code." (*Watkins*, *supra*, 177 Cal.App.4th at p. 344.) Section 10000 "does not set forth any specific duty or course of conduct an agency must take, but leaves to the agency's discretion how to pursue the policy goal." (*Marquez v. State Dept. of Health Care Services* (2015) 240 Cal.App.4th 87, 120.)

Plaintiffs' reliance on a footnote in *Tobe*, *supra*, 9 Cal.4th 1069, also does not support their contention that they are entitled to the relief requested in this case. According to plaintiffs, the California Supreme Court in *Tobe* "officially but informally spoke with such clarity and force as to encourage, justify and endorse the judicial mandate [plaintiffs] seek here, granting [them] 'recourse' of this nature."

In *Tobe*, the California Supreme Court concluded that a city ordinance banning camping and the storage of personal property, including camping equipment, in designated public areas was constitutional on its face. (*Tobe*, *supra*, 9 Cal.4th at p. 1080.) In reciting the background of the ordinance, the court observed that there was evidence that the ordinance was the result of the city's effort to expel homeless people. (*Id.* at p. 1082.) There was also evidence that, on any given night, the number of shelter beds available was less than the need. (*Id.* at p. 1083.) In determining that the ordinance did not violate the plaintiffs' constitutional right to travel, the California Supreme Court stated in a footnote: "[Plaintiffs'] argument that Santa Ana may not deny homeless persons the right to live on public property anywhere in the city unless it provides alternative accommodations also overlooks the Legislature's allocation of responsibility to assist destitute persons to counties. (Welf. & Inst. Code, §§ 17000-17001.5.) If the inability of [plaintiffs] and other homeless persons in Santa Ana to afford housing accounts for their need to 'camp' on public property, their recourse lies not with the city, but with the county under those statutory provisions." (*Id.* at p. 1104, fn. 18.)

The California Supreme Court's citations to sections 17000 through 170001.5 in the footnote in *Tobe* were for the purpose of noting that counties, not cities, have a statutory obligation regarding housing for the indigent. (*Tobe, supra*, 9 Cal.4th at p. 1104, fn. 18.) That is the limited extent to which the footnote may be cited as legal authority. In the footnote, the California Supreme Court did *not* address the nature of the remedy that may be obtained by a homeless person under that statutory scheme, and the footnote does not stand for the proposition that mandate relief is available in this case to compel the county to provide sleeping sites every night to every homeless person residing in the county.

On appeal, plaintiffs also refer to a "Statement of Interest" purportedly filed by the United States in a case in federal district court in Idaho. The trial court below denied plaintiffs' request for judicial notice of the document, and plaintiffs do not challenge that ruling here. Plaintiffs also fail to demonstrate the relevance of the document to the issues on appeal.

Plaintiffs further contend that the county has a mandatory duty under section 17000 to provide sleeping sites because such sites are medically necessary. Plaintiffs quote from *In re Eichorn* (1998) 69 Cal.App.4th 382, which states: "Sleep is a physiological need, not an option for humans. It is common knowledge that loss of sleep produces a host of physical and mental problems (mood irritability, energy drain and low motivation, slow reaction time, inability to concentrate and process information)." (*Id.* at pp. 389-390.) Plaintiffs argue that, because "avoiding sleep deprivation is necessary to protect health, i.e., 'medically necessary,' " the county has a mandatory duty to provide a place to sleep.

We are not persuaded that a county's obligation to provide "subsistence medical care" under section 17000 (*Hunt, supra*, 21 Cal.4th at p. 1014) includes a duty on the county's part to generally provide sleeping sites nightly. The failure to meet any basic need, including food or housing, may result in deleterious effects on a person's health.

Plaintiffs fail to persuasively articulate how or why the general human need for housing constitutes necessary medical care within the context of section 17000. (See *Hunt*, *supra*, at pp. 1014-1015.)

Plaintiffs observe that section 14059 states that "[m]edical care shall include, but is not limited to, other remedial care, not necessarily medical." Plaintiffs argue that "remedial care" under section 14059 "[s]urely . . . includes . . . a minimal physical space where sleep deprivation can be avoided."

Plaintiffs do not provide legal authority indicating that "remedial care" under section 14059 has been interpreted to include housing, or sleeping sites in particular, nor do plaintiffs explain why the standard set forth in section 14059 is relevant to the determination of "subsistence medical care" under section 17000 (*Hunt*, *supra*, 21 Cal.4th at p. 1014).

Lastly, plaintiffs fail to support their conclusory contention, including by providing relevant legal authority, that the county has abused its discretion under section 17000. For example, plaintiffs fail to establish that the manner in which the county exercised its discretion in providing aid and care to residents, particularly with respect to housing assistance and housing programs, is *not* consistent with the statutory scheme or is *not* in furtherance of the objectives of section 17000. (See *Hunt*, *supra*, 21 Cal.4th at pp. 991-992.)

We recognize that having a place to sleep is an important issue for the homeless. In this case, however, plaintiffs fail to establish that the county has a mandatory duty to provide the particular relief that they seek, that is, sleeping sites every night for every homeless person residing in the county. Accordingly, plaintiffs fail to demonstrate that the trial court erred in denying their petition for a writ of mandate.

IV. DISPOSITION

The judgment is affirmed.

_____
BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

_____
MIHARA, J.

_____
DANNER, J.

Clinton v. Cody
H044030